IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1046 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DALSUKHBHAI KHALPABHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1046 of 2004

MR HARIN P RAVAL for Petitioner No. 1-1/4

RULE SERVED BY DS for Respondent No. 1-2

..... for Respondent No. 3

MR JOY MATHEW for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 03/02/2005

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the

Secretary, (Appeals), Revenue Department, State of Gujarat dated 29.9.2003 / 18.12.2003 passed in revision application no. 32 of 1998 in dismissing the same and confirming the order passed by the Dy. Collector, Rajpipla dated 21.8.1997 passed in case no 53 of 1997 by which the order is passed under Section 79A read with Section 202 of the Bombay Land Revenue Code to remove the petitioner from the land in question and to hand over the land in question to the original land owner.

#. The land bearing survey no. 288 situated at village Taria, Taluka Nandod District Bharuch was of the ownership of Shakriben Bilyabhai Vasava respondent no. 4 herein as a restricted land under Section 73A and 73AA of the Bombay Land Revenue Code, as the said Shakriben is Adivashi. It appears from the record that the land in question came to be transferred in favour of the petitioners which according to the Dy. Collector, Rajpipla was in breach of Section 73A and / 73AA of the Bombay Land Revenue Code, and therefore, proceedings came to be initiated and ultimately by order dated 21.8.1997 the Dy. Collector, Rajpipla passed an order in Case No. 53 of 1997 by holding that there is a breach of Sec. 73A and 73AA of the Bombay Land Revenue Code by virtue of the aforesaid transaction in favour of the petitioners and the order came to be passed under Section 73A read with Section 202 of the Bombay Land Revenue Code by which the petitioners were directed to be removed from the land in question and order came to be passed to hand-over the possession of the land in question to the respondent no. 4 - original land owner.

#. Being aggrieved and dissatisfied with the order passed by the Dy.Collector Rajpipla dated 21.8.1997 passed in Case No. 53 of 1997, the petitioners preferred the revision application no. 32 of 1998 before the Secretary (Appeals), Revenue Department, State of Gujarat. It is the case of the petitioners that though number of submissions were made on behalf of the parties, without considering the same and / or dealing with the same and without giving any specific findings and deciding the same on merits, the Secretary (Appeals) dismissed the revision application. Hence, the present Special Civil Application has been filed.

#. Shri S.M. Gohil, learned advocate appears for Shri Harin Rawal for the petitioners, Shri Sood, learned AGP, appears on behalf of the respondent no 1 to 3 and Shri Joy Mathew, learned advocate, appears on behalf of the respondent no. 4 - original land owner. Shri Gohil, learned advocate has submitted that though number of

submissions have been made before the Secretary (Appeals) and the same have also been noted by the Secretary (Appeals) in his order, the Secretary (Appeals) has, without considering the same and dealing with the same and without giving any specific findings dismissed the revision application filed by the petitioners by giving the finding only in four lines. It is submitted that as an authority, the authority is bound to consider and deal with the submissions and is required to give specific findings on each submissions.

#. Shri Joy Mathew, learned advocate who appears on behalf of the respondent no. 4 as well as Shri Sood, learned AGP, have tried to support the order passed by the Secretary (Appeals), Revenue Department, but they could not satisfy this court with regard to the submission on behalf of the petitioners that though number of submissions were made which are noted in the order, the Secretary (Appeals) has not dealt with the same and / or not considered the same and there is no specific findings or discussion with regard to each submissions.

#. Heard the learned advocates for the parties.

#. On bare perusal of the order dated 29.9.2003 / 18.12.2003 in Revision Application No.32 of 1998, it appears to the Court that number of submissions have been made by the petitioners as well as respondent No.4 on merits which have also been noted by the Secretary (Appeals) in his order. However, there is no discussion and / or specific finding given by the Secretary (Appeals) with regard to the said submissions and contentions and the Secretary (Appeals) has dismissed the revision application by passing the order in four lines after narrating the submissions by mentioning the provisions of Section 73-A and 73-AA of the Code, however, he has not dealt with or considered any of the submissions made on behalf of the petitioners as well as respondent NO.4 on merits. As a quasi judicial authority, the Secretary (Appeals) is bound to consider all the submissions and contentions raised by the parties and to deal with and decide the same on merits and to give specific finding dealing with the same. Non-considering and/or non-dealing with the submissions and contentions itself is violative of the principles of natural justice. Under the circumstances, the impugned order passed by the Secretary (Appeals) dated 29.9.2003 / 18.12.2003 in Revision Application No.32 of 1998 is required to be quashed and set aside only on this ground and the matter is required to be remanded to the Secretary (Appeals) to decide the same on merits afresh

after dealing with the submissions and contentions raised on behalf of the parties.

#. For the reasons stated above, the impugned order passed by the Secretary (Appeals) dated 29.9.2003 / 18.12.2003 in Revision Application No.32 of 1998 is quashed and set aside and the matter is remanded to the Secretary (Appeals), Revenue Department, State of Gujarat for deciding the said revision application afresh on its own merits and in accordance with law after dealing with all the contentions which are raised by the parties and to give to specific finding dealing with the same and to pass speaking order. Considering the fact that the proceedings which came to be initiated in 1997 and the dispute is with regard to the breach of the provisions of Section 73-A and 73-AA of the Code in respect of the land held by Adivasi, the Secretary (Appeals) is directed to decide and dispose of the said revision application within a period of three months from the date of the receipt of the writ of this order. Until then, parties are directed to maintain status quo.

#. In view of the above, this petition is allowed. Rule is made absolute with no order as to costs.

Direct service is permitted.

(M.R.Shah,J)

(pathan)